



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDV/153395

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 08, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the [REDACTED] County Department of Human Services in regard to Medical Assistance, a hearing was held on December 17, 2013, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner is when the petitioner became eligible for medical assistance because of a divestment.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney William S. Milne  
3624 Oakwood Hills Pkwy  
Eau Claire, WI 54702

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Steve Tilbury

[REDACTED] County Department of Human Services  
711 N. Bridge Street  
[REDACTED], WI 54729-1877

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.
2. The petitioner applied for medical assistance on September 18, 2013. She was found eligible as of September 1 2013.

3. The petitioner indicated on her application that she lives in the [REDACTED] in [REDACTED]. The [REDACTED] [REDACTED] is an assisted living facility and not a nursing home. [http://www.\[REDACTED\].com](http://www.[REDACTED].com).

### **DISCUSSION**

The petitioner applied for medical assistance on September 18, 2013, seeking benefits retroactive to June 1, 2013. Medical assistance eligibility generally can begin as early as the first day of the month three months before the date of the application if the person meets all of the program's eligibility requirements. Wis. Admin. Code, § DHS 103.08(1). The county agency found the petitioner eligible as of September 1, 2013. The agency's response indicated that "Community Waiver does not backdate." This is true. MA-Waiver policy states that eligibility does not begin until the applicant is actually "determined to need Medicaid waiver services." *MA-Waiver Manual*, § 2.01.; see also *Medicaid Eligibility Handbook*, §§ 2.8.1. and 28.7. The petitioner indicated on her application that she lives in the [REDACTED], a facility described on its website as an assisted living facility. A person living in an assisted living facilities is considered to be living in the community rather than in a nursing home. As such, she must receive benefits through the MA-Waiver program and follow that program's rules. Because that program does not allow retroactive benefits, I must uphold the agency's decision to begin benefits on September 1, 2013.

I note that other questions arose during the hearing, such as whether the sale of the petitioner's house constituted a divestment and whether the petitioner adequately verified her information. Because the agency found her eligible on the earliest date eligibility could begin under the MA-Waiver program, these questions do not need to be answered.

### **CONCLUSIONS OF LAW**

The petitioner is not eligible for retroactive benefits because she lives in the community.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

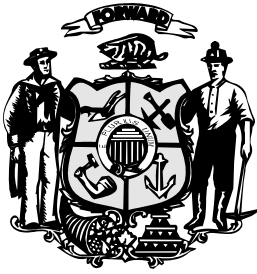
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,  
Wisconsin, this 15th day of January, 2014

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\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 15, 2014.

██████████ County Department of Human Services  
Division of Health Care Access and Accountability  
[wmilne@wrpr.com](mailto:wmilne@wrpr.com)